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SUPREME COURT, U. S.

No. 70-260

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

JACK L. KING, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM OF THE PETITIONER IN REPLY TO THE MEMORANDUM OF THE UNITED STATES

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The United States has filed a Memorandum in Opposition to the Petition for a Writ of Certiorari, in which the principal contention of the Petitioner has been completely misapprehended.

In the Memorandum of The United States, Second Paragraph, middle of Page 2, it is said:

> "Petitioner contends that the trial court erred by excluding certain testimony by defense witnesses, Cuban refugees to whom the documents had been sent. These witnesses were allowed to testify that they presented the documents to Cuban auth-

orities and subsequently received permission to leave Cuba. The Court refused to permit them to state that there was a causal relationship between the two events (II A. 483-484, 487-511).[2] This ruling was correct, since the excluded testimony would have been hearsay or opinion.[3] "

Footnote 3 of the Memorandum reads:

"3 The present case is therefore not comparable to UNITED STATES v. SHAVIN, 287 F. 2d 647 (C.A. 7), upon which petitioner relies, for the evidence improperly excluded in that case dealt with objective facts, not opinion."

The contention of petitioner is not in regard to the exclusion of testimony by his witnesses who were permitted to testify concerning the use of the documents prepared by him, him, but of the complete exclusion of testimony of a class of witnesses, who were Cubans in Miami, Florida trying to bring their relatives out of Cuba and who dealt directly with petitioner in his efforts to help them achieve their desire. These witnesses were proffered to the court and the court over strenuous argument of counsel for petitioner were categorically excluded from giving any testimony at the trial. Certainly these witnesses who dealt directly with the petitioner would have been able to testify as to objective facts concerning representations made to them by petitioner during these face to face transactions, either with petitioner or his

secretary. Since the representations made by petitioner to his clients or by his secretary to his clients were alleged in the charges against the petitioner to have been false and misleading with the intention to defraud such clients of money, any testimony concerning these transactions by such clients went to the res gestae of the case and so would be relevant and competent testimony. Some fourteen witnesses of this same class were called by the government on the trial of the case and were permitted to give testimony as to conversations had between them and petitioner or his secretary with regard to what could be done for them in trying to expedite the departure of their relatives from Cuba.

Thus, to exclude any and all testimony of petitioner's client-witnesses of the same class as the government's witnesses falls squarely within the holding of SHAVIN v. UNITED STATES, 287 F 2d 647 (C.A. 7). and gives grounds for reversal under denial of due process as provided by the Fifth Amendment to the Constitution of the United States.

As to the United States' disagreement with petitioner's second contention of error in the trial court, petitioner would only re-emphasize his argument beginning at Paragraph numbered 2. at the bottom of page 11 of the Petition and continuing through the first Paragraph on Page 14, and especially the citations from REISMAN V. U. S., 409

F 2d 789 (C.A 9). The defendants below were not charged with a conspiracy, but as individual co-defendants. Therefore, to convict one defendant for misrepresentations made by the other, it must have been proved that the one had actual knowledge of the false representations of the other. The only proof on the trial of this case was that petitioner's co-defendant made up certain documents under petitioner's direction, not that petitioner had either actual or construvive knowledge of the representations made by the co-defendant to the alleged victims of an alleged fraudulent scheme.

This memorandum is respectfully submitted in order to make clear to the Supreme Court petitioner's contentions of error so that the Court may appropiately review the case and grant Certiorari.

September 1971

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